

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 10-0416

In re: Jennifer Caudill, an individual also known as
Jennifer Walker and Jennifer Herriott Walker,

Respondents

Decision and Order as to Jennifer Caudill

Appearances: Colleen A. Carroll, Esquire, Office of General Counsel, United States Department of Agriculture, Washington, DC for the Complainant

William J. Cook, Esquire, Tampa, Florida for the Respondents

Preliminary Statement

This license termination proceeding was initiated on September 7, 2010 by Kevin Shea, the Acting Administrator of the Animal and Plant Health Inspection Service (APHIS) pursuant to Animal Welfare Act (the Act or AWA), 7 U.S.C. §2131, *et seq.*, by the filing of an Order to Show Cause Why Animal Welfare Act Licenses 58-C-0947, 55-C-0146 and 58-C-0505 Should Not Be Terminated. The action as brought originally named Jennifer Caudill (also known as Jennifer Walker and Jennifer Herriott Walker) (Caudill), Brent Taylor (Taylor) and William Bedford (Bedford), individuals doing business as Allen Brothers Circus, and Mitchel Kalmanson (Kalmanson) as Respondents. When AWA license 55-C-0146 was voluntarily terminated on May 12, 2012, the issues concerning Taylor and Bedford were resolved. APHIS moved to withdraw the Order to Show Cause concerning Bedford and Taylor and an Order of Dismissal was entered as to

them on June 15, 2012.¹ On September 24, 2012, I entered a Decision and Order as to the allegations against Mitchel Kalmanson.

Three days of trial were conducted in Tampa, Florida from June 11 to June 13, 2012.² At the hearing, thirteen witnesses testified.³ Thirty-five exhibits were introduced by the government and eighteen by the Respondents.⁴ Post hearing briefs were filed by all parties and the remaining allegations against Jennifer Caudill will be disposed of.

Discussion

The Animal Welfare Act enacted in 1970 (P.L. 91-579) draws its genesis from and is an amendment of the Laboratory Animal Welfare Act (P.L. 89-54) which had been enacted in 1966 to prevent pets from being stolen for sale to research laboratories, and to regulate the humane care and handling of dogs, cats and other laboratory animals. The 1970 legislation amended the name of the prior provision to the Animal Welfare Act in order to more appropriately reflect its broader scope.⁵ Since that time Congress periodically has acted to strengthen enforcement, expand coverage to more animals and activities, or conversely, curtail practices that are viewed as cruel or dangerous.⁶

¹ Order of Dismissal, June 15, 2012, Docket Entry No. 73

² Docket Entry Nos. 44, 51, 65, and 67.

³ References to the Transcript will be indicated as Tr. and the page number.

⁴ Complainant's exhibits are referred to as CX and the exhibit number. Respondent Caudill's exhibits are referred to as RCX and the exhibit number. Respondent Kalmanson's exhibits are referred to as RKX and the exhibit number. Joint Respondent exhibits are referred to as RCKX and the exhibit number.

⁵ The Congressional statement of policy is set forth in 7 U.S.C. §2131 which provides in pertinent part: "The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent or eliminate burdens on such commerce, in order –

(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) to assure the humane treatment of animals during transportation in commerce; and

(3) to protect the owners of animals from theft of their animals by preventing the sale or use of animals which have been stolen. "

⁶ A 1976 amendment added Section 26 of the Act making illegal a number of activities that contributed to animal fighting. Haley's Act (H.R. 1947) introduced in the 100th Congress made it unlawful for animal

The Act provides that the Secretary shall issue licenses to dealers and exhibitors upon application in such form and manner as the Secretary may prescribe, 7 U.S.C. §2133.⁷ As part of his enforcement authority, the Secretary may suspend or revoke the license of any dealer or exhibitor who violates the Act or its Regulations. 7 U.S.C. §2149(a). The power to require and to issue licenses under the Act includes the power to terminate a license and to disqualify a person from being licensed. *In re: Amarillo Wildlife Refuge, Inc.* 68 Agric. Dec. 77 (2009); *In re: Loreon Vigne*, 67 Agric. Dec. 9620 (2008), *aff'd with modifications*, 67 Agric. Dec. 1060 (2008); *In re: Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991). Violations of the Act by licensees can result in the assessment of civil penalties, and the suspension or revocation of licensees. 7 U.S.C. § 2149.

Basis Alleged for the Agency Determination Concerning Caudill

Termination of Caudill's AWA Exhibitor's License was sought under the provisions authorizing the Department to terminate any license issued to a person who:

Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other Government agencies, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act. 9 C.F.R. § 2.11(a)(6) (Emphasis indicated in Complaint)

Although the Complaint alleges that Caudill made false or fraudulent statements and/or provided false or fraudulent records to APHIS,⁸ the emphasis added in the above cited provision in the Complaint suggests that primary reliance is being placed upon the more

exhibitors and dealers (but not accredited zoos) to allow direct contact between the public and large felids such as lions and tigers.

⁷ "... Provided that no license shall be issued until the dealer or exhibitor shall have demonstrated that his facility complies . . . "

⁸ Paragraph 33 of the Complaint (Docket Entry 1).

general determination of unfitness.⁹ The Complaint alleged that Respondents (collectively, including Caudill) engaged in activities designed to circumvent an order of the Secretary of Agriculture in revoking the AWA exhibitor's license previously held by [Lancelot Kollman] Ramos, and have acted as surrogates for Ramos. Caudill and Kalmanson were alleged to continue to act as Ramos's surrogates, and to facilitate the circumvention of his license revocation order.¹⁰ The subsequent paragraph of the Complaint concluded that allowing Respondents to continue to hold AWA licenses would be contrary to the purposes of the Act as each of them willfully and knowingly engaged in activities designed to circumvent the Secretary's revocation of another person's license and in the case of Caudill, the earlier allegation of having made false statements and provided false documents to a federal agency (APHIS) was repeated.

Factual support for termination on the grounds of false statements and providing false documents however is lacking. Complainant faulted Caudill's application for the exhibitor's license that was issued to her in representing that the nature of her business was a "circus" and that she held eight dogs. Given that Caudill's application was submitted in April of 2009, the information contained on the form was correct at the time of its preparation.¹¹ Complainant's post hearing brief enumerated multiple inconsistencies contained in affidavits signed by Caudill but which were prepared by APHIS personnel. The statements although signed by Caudill were actually distillations of interviews with Caudill and are not her verbatim statements. Taken in the context of the antagonistic and biased investigation initiated and conducted with the obvious intent of supporting a

⁹ Paragraph 32 of the Complaint, *Id.*

¹⁰ Paragraph 34 of the Complaint, *Id.*

¹¹ No explanation was introduced for the reasons for the delay from April of 2009 when the application was submitted and the issuance of the license on October 14, 2009. CX-1.

predetermined conclusion, I conclude any inconsistencies on Caudill's part fail to rise to the level of fraud. Similarly I also give little weight to and will not attribute to fraud any of the documents prepared by Caudill under stress and with the intent of extricating herself from the predicament precipitated by the APHIS investigation and actions taken against her.

Little support is also found for the conclusion that Caudill in any way was operating as a surrogate for Ramos. The evidence instead supports the position that Caudill and her brother, both with circus background, were attempting to take advantage of a business opportunity for which they were well qualified to undertake by purchasing Ramos's animals. Tr. 681-682. Similarly, I find no evidence that Caudill was engaging in activities designed to circumvent the revocation of Ramos's license. While Complainant introduced testimony through Officer Manson that when Ramos was interviewed at his mother's property in Balm, Florida, he had stated that he was "using" Caudill's license, Ramos was not present as a witness to confirm, deny or clarify the truth of the account. While the rules of evidence are not strictly applied in administrative proceedings, the absence of a right to confront witnesses and subject them to cross examination remains a fundamental element of due process and will be invoked to reject such testimony in this case.¹² At a minimum, such uncorroborated evidence should not stand as the lynch pin of support for the Government's case.

Lancelot Kollman Ramos's (Ramos) AWA Exhibitor's License No. 58-C-0816 was ultimately revoked effective October 19, 2009 after protracted administrative proceedings commenced in April of 2005 following his unsuccessful appeal to the United

¹² Manson's report also contains language striking similar to that which directed to be included in the USDA reports. (CX-9) On cross examination, Manson admitted that the conclusory language was only an assumption and that if he had more information, his opinion could change. Tr. 35.

States Court of Appeals for the Eleventh Circuit.¹³ At the time of the revocation of his license, Ramos either owned or had in his possession approximately 34-37 exotic felids either being exhibited at circus venues or being housed at his mother's property in Florida.¹⁴ CX-9.

Early in 2009, upon hearing that Ramos's license was subject to being revoked, Caudill and her brother Jason Caudill approached him seeking to purchase the tigers he owed that were travelling with the various circuses. Tr. 681-682. Caudill previously held a Class C exhibitor's license, and had in April had again applied for a new license.¹⁵ Her brother Jason Caudill had experience presenting tigers so the brother and sister felt that it was a perfect opportunity for them.¹⁶ Tr. 681-682. When approached, Ramos was at first disinclined to sell the animals, however, as the revocation date drew nearer he relented and agreed to their sale. In a series of documents dated November 5, 2009, 37 felids and the related contractual agreements were transferred to Caudill slightly more than two weeks after the effective date of Ramos's license revocation.¹⁷ CX-2, 3, 34, 35, RCX-1, 2. The sale agreement involving the ten tigers travelling with the Feld circus (also referred to at times as Ringling Brothers, Barnum and Bailey) was expressly made

¹³ *In re Octagon Sequence of Eight, Inc., et al.*, 66 Agric. Dec. 670 (2007); *aff'd by Judicial Officer*; 66 Agric. Dec. 1093 (2007), *aff'd sub nom. Kollman Ramos v. Dep't of Agriculture*, 68 Agric. Dec. 60 (2009); 322 Fed App'x 814 (11th Cir. 2009)(not selected for publication.) CX-32, 33. Although affirming the decision of the Judicial Officer, the Court found the actions of the agency not to be above reproach. Characterizing the actions as "virtually glacial and hardly represent[ing] best practice by a government agency, the decision noted that more than seven years had passed between the date of the conduct related to the two lions and the decision of the Judicial Officer.

¹⁴ Ten tigers had been travelling with Feld Entertainment, Inc. (d/b/a Ringling Brothers, Barnum & Bailey); eight tigers and one liger were with the Cole Brothers Circus (Cole Bros); eight tigers were with Soul Circus, Inc. (UniverSoul or Soul); and 6-10 were being kept at property owned by Ramos's mother in Balm, Florida. Tr. 673-674, CX-5, 6.

¹⁵ Caudill submitted her application in April of 2009; it was finally issued in October of that year.

¹⁶ Jason Caudill's qualifications were also questioned despite his extensive experience. As with his sister, the review of their experience appears less than unbiased. *See*, Tr. 647, RCX-6.

¹⁷ Ramos's options would be severely limited once revocation took place. According to Dr. Goldentyer's testimony, he could keep the animals as long as he did not engage in regulated activity, or he could donate them. USDA could have provided assistance, but did not offer to do so with Ramos. Tr. 336-339.

subject to a leasing agreement of the tigers to Feld through November of 2010. When USDA contacted Feld in December of 2009, investigators were informed by Feld that it no longer had any contractual arrangement with Ramos, advising instead that it was leasing the tigers from Caudill who was licensed as an exhibitor. CX-4, RCX-4. Similar contractual arrangements were entered into by Caudill with Soul Circus, Inc. and Cole Bros. Circus.¹⁸ CX-13. During the same approximate time Caudill sent a letter to Dr. Goldentyer informing her that she had acquired Ramos's animals and providing her contact information. RCX-3. She also made numerous telephone calls to Goldentyer's office, all of which Dr. Goldentyer refused to take. Tr. 652-654. Despite the remedial nature of the Act, Dr. Goldentyer felt herself under no obligation to assist Caudill in any way by providing guidance, explaining instead that she would not "talk people around what the requirements are." Tr. 331-332.

Unwilling to believe that the felids had been sold¹⁹ or that Ramos was no longer "involved" in exhibiting them, Dr. Elizabeth Goldentyer, in her capacity as the Eastern Regional Director for the USDA Animal and Plant Health Inspection Service, Animal Care Program, concluded that Caudill and others were engaged in activity designed to circumvent an Order of the Secretary of Agriculture revoking Ramos's AWA exhibitor's license. The resulting investigation directed against Caudill (and Kalmanson) was inappropriately influenced and unacceptably biased from its onset as APHIS personnel involved in preparing inspection reports were ordered by Goldentyer and her staff to include language in their reports to the effect that "This licensee appears to be

¹⁸ No written agreement was introduced, but the testimony at trial indicates that Caudill had assumed responsibility for those animals.

¹⁹ USDA apparently would not have objected if Ramos had donated the animals. Dr. Goldentyer indicated the Department's objective was to have a situation where "he is not involved in the tigers anymore." Tr. 337.

circumventing the revocation of Lancelot Kollman Ramos-2.10(b), 2.11(d), 2.12.” Tr. 386-387, CX-20 (McFadden), 23 (Geib), 24 (Baltrush), 25 (Baltrush),²⁰ 28 (Howard).²¹

Dr. Gloria McFadden, Dr. Mary Geib, and Jan Baltrush, an experienced USDA Animal Care Inspector since 1988, all testified that they were directed to include the language even though none of them found any factual basis for its inclusion. Tr. 159-160, 177-179, 198. While possibly not rising to the level of “fraud upon the Court” as was suggested in Caudill’s post hearing brief, Goldentyer’s egregiously improper conduct produced such a thoroughly flawed investigation that scant reliance should be placed upon its conclusions. Just as evidence illegally obtained in criminal proceedings is generally excluded pursuant to the doctrine of “the fruit of the poisonous tree” the conclusions reached by the investigation at issue should, by analogy, be excluded here. Such application of the doctrine should suffice to deter future recurrences.²²

On February 13, 2010, Dr. Christopher E. Nichols, then a USDA Veterinary Medical Officer, conducted what was termed a “routine” inspection of the Soul Circus in Macon, Georgia. Tr. CX-10, 11. Despite the benign and innocuous characterization given to the inspection, it is clear from the testimony concerning the elaborate preparation for it that it was anything but routine. Nichols was accompanied by Sherri Thomas, an IES Investigator, who prior to arriving at the circus had provided Nichols with “detailed information and [he was] shown frontal photographs of the possible violators....”²³ Tr. 477-479, CX-11. During the course of his inspection, Nichols found four deficiencies,

²⁰ “Should a Contracted Licensee act in a manner that is circumventing the AWA the Cole Brothers Circus may be held responsible.” CX-25.

²¹ CX-28 was not admitted as that inspection was conducted after the dates alleged in the Complaint. Its note indicated “This licensee appears to be assisting in the direct circumvention of a USDA revocation order.”

²² The phrase “fruit of the poisonous tree” was first used by Justice Felix Frankfurter in *Nardone v. United States*, 308 U.S. 338 (1939)

²³ Some of the information reportedly came from the Department’s “intelligence branch.” Tr. 129-130.

the most significant of which was that Caudill lacked sufficient knowledge and experience to handle dangerous animals. Of the other deficiencies, a sanitation violation was subsequently removed as being unsupported. A food storage issue was corrected on the spot, and the deficiency relating to an inappropriate cage was expeditiously dealt with.²⁴ Tr. 495-496, CX-10. In the briefing given to him prior to the inspection, Nichols had been instructed to see if Ramos was present. Tr. 486-487. Ramos was never observed in the ring, but rather was observed in the audience and later seen behind the ring opening the cages and assisting in getting the tigers into the ring. Tr. 131-134, 488-489, 491-493, CX-11. Although it was clear from the preparation for the inspection that Ramos's involvement was central to the investigation, inexplicably no effort was made at the time to interrogate Ramos concerning his role, leaving it unclear as to whether Ramos was present as a principal, volunteer or employee.²⁵ In addition to his past relationship with Soul as an exhibitor, Ramos had also worked for the circus in other capacities and testimony was later introduced that Soul preferred to use their own employees. Tr. 657.

In light of the circumstances and the fatally flawed fashion in which the investigation was conducted, the handling violation is highly questionable, raising significant questions as to whether the issue of Caudill's "qualifications" was pretextual or was in fact fairly and impartially evaluated. At the time of the inspection, Caudill possessed a valid exhibitor's license and was not directly involved in presenting the tigers. According to Bedford's testimony, most USDA licensed exhibitors hire someone else to present the tigers in the ring. Tr. 80. That certainly was the situation at the Soul

²⁴ Nichols report was changed after review by his supervisors. Tr. 524-525, CX-10. Nichols subsequently performed a follow up inspection in Atlanta and determined that three of the four prior deficiencies had been corrected (leaving only the handling violation), but failed to prepare an amended report. Tr. 513, 525.

²⁵ There was some indication that Ramos built props for the circus and was paid for that work by Soul. Tr. 465-466.

circus as it was one of Soul's employees, John Jhiro, (whose qualifications apparently were never questioned) who presented the tigers during the performances. Tr. 589-591, 648, 657, 668-669. Jhiro was an experienced presenter, having worked for numerous circuses in South America and with four years experience with Ringling Brothers, where he worked with big cats.²⁶ Tr. 591, 648-649. Caudill herself had extensive exposure to working with big cats, and while she may not have "presented" the animals in the ring previously, the evidence introduced during the hearing concerning her qualifications convinced me that she was at least as, if not more qualified to handle dangerous animals than many exhibitors in other cases that I have heard. Tr. 76-77, 639-647, 661-662, RCX-6, 7, 8. A seasoned and experienced exhibitor himself, in contrast the conclusion reached by USDA, Bedford considered Caudill fully qualified. TR. 76-77.

Regardless of its appropriateness,²⁷ the pronouncement concerning Caudill's lack of qualifications contained in the Inspection Report proved to cause its intended destructively devastating damage to Caudill. Not only was Caudill embarrassed and humiliated by being described as "unqualified,"²⁸ once Sedrick Walker (one of the owners of Soul) was informed that she (and the act) would be "unable to conduct regulated activity," and after rejecting the use of Bedford to assume responsibility for the act, without approval from her, he contacted and within two weeks had made arrangements with Mitchel Kalmanson to assume custody of the animals without

²⁶ Kalmanson testified that Jhiro provided him with two or three inches of his resume. Tr. 591.

²⁷ Given the direction to include specific language in the Inspection Reports without regard to whether it was supported or not, one can only speculate as to what the detailed information given to VMO Nichols was or whether he was also directed to make specific findings as to Caudill's qualifications.

²⁸ Caudill's fax to Nicolette Petervary was considered insufficient by Dr. Goldentyer. CX-15, RCX-6. Although additional information was later provided, given the apparent animus against Caudill, it apparently was either ignored or not even considered. RCX-7, 8. It is manifestly clear that USDA never contacted any of the references that Caudill gave to them. Tr. 661-662.

payment for the animals to Caudill.²⁹ Tr. 658-659, CX-10. Effectively precluded from being able to continue to engage in regulated activity with the animals at Soul but still hoping to maintain some relationship with Soul and to get her cats back, Caudill lost both possession and control of the animals and the income that they generated. Tr. 664-666. The immediate and considerable financial loss was soon to be repeated with her animals that had been placed with Cole Brothers.

While the evidence does establish that Ramos was present at the circus in Macon, Georgia on February 13, 2010 and was “assisting” getting the tigers into the ring, it is also undisputed that once Caudill was informed by Investigator Thomas that it was not permissible for Ramos to be present or to assist in the act in any way his involvement ceased and he was never again observed working in any way with the animals. Tr. 133-134, 177-179, 198, 684-685, CX-11. I will accordingly find that Ramos’s limited participation on February 13, 2010 fails to establish that Caudill was attempting to circumvent the revocation of Ramos’s license.³⁰

Having also concluded that any statements by Caudill or documents prepared by her did not rise to the level of fraud, that she was not a surrogate of Ramos, and that the allegation that she engaged in conduct designed to circumvent Ramos’s license revocation was unsupported, consideration will next be given to whether Caudill should nonetheless be determined to be unfit. I conclude otherwise. The record certainly fails to contain any allegation that Caudill failed to provide humane care and treatment of her

²⁹ Caudill had attempted to resolve the problem on a temporary basis by transferring the animals to William Bedford; however, that apparently was not satisfactory to Walker and without Caudill’s approval arrangements were made by Walker for Kalmanson to assume responsibility for the animals.

³⁰ Having trained and worked with some of his animals for a long time, Ramos’s reluctance to terminate all contact with his animals certainly is understandable. In his appeal to the Judicial Officer, Ramos claimed to be an animal lover. The Judicial Officer however noted that even were he to find that Ramos was an animal lover as he claimed that fact would not operate as to defense to his violations of the Act. *In re Octagon Sequence of Eight, et al.*, 66 Agric. Dec at 1100 (2007).

animals, the fundamental purpose of the Act. Instead the record supports the conclusion that Caudill was subjected to an improperly conducted investigation by individuals misusing the authority vested in them, the result of which was professional embarrassment and significant financial loss.

On the basis of all of the evidence before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Respondent Jennifer Caudill is a resident of the State of Florida. CX-1.
2. Caudill is a member of the fourth generation on both sides of her family to be a circus performer. RCX-6. Her father is an exotic animal trainer, her mother is a horse trainer, both older brothers have worked with exotics, and her grandmother was an aerial artist. Tr. 639, RCX-6. Although Caudill has never presented tigers in a ring, she has been around circus animals since she was in diapers and has extensive prior experience with lions, tigers, elephants, horses, zebras, camels and dogs. Tr. 76-77, 639-647, CX-6, 7, 8.
3. In April of 2009 Caudill applied for and in October of 2009 was issued Animal Welfare Act Exhibitor's License 58-C-0947.³¹ CX-1.
4. Although licensees must provide information concerning the animals they possess at the time of annual renewal of the license, Animal Welfare Act Exhibitor's licenses, once granted, contain no restrictive endorsements or limitations as to what animals may be exhibited on the face of the license.

³¹ The Application for License bears a stamped date of April 29, 2009, but elsewhere is stamped "received" on June 26, 2009. Given the renewal date of 16 October 2010, it appears to have been effective October 15, 2009. There was no reason given for the delay in issuing the license.

5. Seeing a potential business opportunity, in early 2009 prior to Ramos's license being revoked, Caudill and her brother Jason Caudill approached Ramos seeking to purchase his tigers; however, at that time he was unwilling to sell them. Tr. 681-682, CX-

6. As the revocation date for Ramos's license approached, he agreed to sell the 37 felids and transfer the related contractual agreements in a transaction finally consummated with a series of documents dated November 5, 2009, slightly more than two weeks after the effective date of his license revocation. CX-2, 3, 34, 35, RCX-1, 2. There were two written agreements (one for \$150,000 covering the animals under contract to Soul Circus, Inc. and Cole Brothers Circus and a second for \$80,000 covering the Ringling Brothers, Barnum and Bailey Circus [Feld] animals); Ramos received \$10,000 as a down payment and was to get the balance in installments. RCX-1, 2, Tr. 650-651.

7. The sale agreement involving the ten tigers travelling with the Feld circus was expressly made subject to a leasing agreement of the tigers to Feld through November of 2010. When USDA investigators contacted Feld in December of 2009, they were informed by Feld that it no longer had any contractual arrangement with Ramos and were advised that it was leasing the tigers from Caudill who was licensed as an exhibitor. CX-4, RCX-4.

8. Similar contractual arrangements were made by Caudill with Soul Circus, Inc. and Cole Bros. Circus.³² CX-13.

9. On February 13, 2010, Dr. Christopher E. Nichols, then a USDA Veterinary Medical Officer, conducted what was termed a "routine" inspection of the Soul Circus,

³² No written agreement was introduced, but the testimony at trial indicates that Caudill had assumed responsibility for those animals.

Inc. in Macon, Georgia. Tr. 524-525, CX-10, 11. Nichols found four deficiencies, including a lack of qualifications violation, the second a food storage issue which was corrected on the spot, and the third relating to sanitation issues (subsequently removed as unsupported) and a fourth, an inappropriate cage which was expeditiously dealt with.³³ Tr. 524-525, CX-10. His report was subsequently altered after review by his supervisors. Tr. 524-525.

10. As a result of the handling or lack of qualifications violation, Soul Circus was informed that the animals could no longer be exhibited under Caudill's license.

11. In an attempt to find a temporary solution permitting the continued exhibition of the animals, Caudill called her family friend and licensed exhibitor William Allen Bedford and asked him to assume responsibility for the animals until she could satisfy USDA that she was qualified. Tr. 39. Bedford agreed and Caudill executed a transfer of the animals to him. CX-12.

12. Bedford's attempt to assume responsibility for the act was rejected by Soul Circus's Sedrick Walker and without approval from Caudill, he contacted and within two weeks made arrangements with Mitchel Kalmanson to assume custody of the animals without payment for the animals to Caudill.³⁴ Tr. 56, 658-659.

13. Despite submission of additional supporting documentation and references concerning her prior experience working with big cats, Caudill's efforts to change the determination of her qualifications proved unsuccessful. Tr. 641-644, 646, 660, CX-15,

³³ Nichols report was changed after review by his supervisors. Tr. 524-525, CX-10. Nichols subsequently performed a follow up inspection in Atlanta and determined that three of the four prior deficiencies had been corrected (leaving only the handling violation), but failed to prepare an amended report. Tr. 513, 525.

³⁴ Caudill had attempted to resolve the problem on a temporary basis by transferring the animals to William Bedford; however, that apparently was not satisfactory to Walker and without Caudill's approval arrangements were made by Walker for Kalmanson to assume responsibility for the animals.

RCX-6, 7, 8. As there was no testimony concerning the extent of the evaluation process, it is unclear whether the additional documentation was actually examined or simply ignored. It is clear that none of the references were contacted.

14. On February 25, 2010, Kalmanson met with Soul Circus officers and then IES Officer Godfrey who suggested to him that the animals should be considered to have been abandoned. Tr. 575. With Godfrey's approval, Kalmanson then prepared a transfer sheet and took possession of the animals. Tr. 577-579, CX-14. Neither Caudill nor Bedford was involved in the discussions.

15. On March 2, 2010, at the direction of the Georgia Department of Natural Resources, Caudill prepared a second transfer sheet for the Soul animals. Tr. 581, 666-667, CX-14.

16. Unable to alter USDA's position on her qualifications to handle felids, on April 30, 2010, Caudill sold to Feld the animals they were leasing. Tr. 655-656, RCX-5. With the proceeds, she paid Ramos the \$80,000 owed to him for those animals. Tr. 676.

17. In May of 2010, a USDA Investigator emailed a Florida Fish and Wildlife Commission officer advising him that Ramos was going to receive a \$225,000 civil penalty and Caudill would be assessed a \$12,500 civil penalty and a one year suspension of her license. RCX-16.

18. USDA Inspections of Cole Brothers Circus were conducted on May 13, 2010, June 8, 2010 and July 8, 2010. On each occasion, as directed by Goldentyer and other supervisors, language indicating that the licensee appeared to be attempting to circumvent the revocation of Ramos's license was included in the Inspection Reports. CX-20, CX-23, CX-25. McFadden's report indicated (although she admitted not knowing what

Ramos looked like) that a man was observed at a horse trailer that “could have been” Ramos. Tr. 157, CX-20. Neither Mary Geib nor Jan Baltrush, the authors of the other reports, observed Ramos being present. Tr. 177-179, 198.

19. As had been done with the Soul animals because of Caudill’s alleged lack of qualifications, Caudill transferred the animals being exhibited at Cole Brothers animals to Bedford and his partner where they continued to be exhibited under Brent Taylor’s and William Allen Bedford’s license as was reflected in the inspection report. CX-7, 20. Bedford subsequently notified USDA that he had donated the animals back to Caudill and the handling violations were again included. CX-23, 24.

20. Similar to the pressure exerted on the Soul circus, Jan Baltrush’s report advised Cole Brothers that they must assume responsibility for “these dangerous animals” and that they would have to bring in another licensee if the act was to continue. Shortly thereafter, Cole Brothers also contacted Kalmanson who agreed (again without compensating Caudill) to assume responsibility for the animals. Tr. 200, 598, CX-25, RKX-7, RKX-8.

21. No evidence was introduced indicating that Caudill failed to provide humane care and treatment to the animals which she purchased from Ramos.

22. The abuse of authority in directing that unsubstantiated language be placed in inspection reports and the questionable review of Caudill’s qualifications to handle felids was the proximate cause of Caudill experiencing the loss and control of animals she had purchased and the revenue generated by their exhibition.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Although Respondent had initiated discussions with Ramos concerning the purchase of his animals prior to the effective date of his license revocation, her subsequent consummation of the transaction after his license had been revoked constitutes a violation of 9 C.F.R. § 2.132.

2. The evidence is insufficient to find that Respondent Caudill is unfit to hold an AWA license or that maintenance of a license by her would in any way be contrary to the purposes of the Act.

Order

1. The determination by the Administrator that Respondent Jennifer Caudill is unfit to be licensed as an exhibitor under the Act is **REVERSED** and the license termination proceedings against AWA License No. 58-C-0947 are **DISMISSED**.

2. Any application for EAJA fees shall be submitted not later than 30 days after this Decision and Order becomes final. In the event of an appeal by the Complainant within that period, action on the application will be deferred until a final Decision is entered.

3. This Decision and Order shall become final and effective without further proceedings thirty-five days after service on the Respondents, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice, 7 C.F.R. §1.145.

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

February 1, 2013



Peter M. Davenport
Chief Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire
William J. Cook, Esquire

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776